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Sens. Coughlin, Jacobson

Effective date: *

ACT SUMMARY

- Makes a county or counties eligible to establish a community-based correctional facility and program (CBCF) or district community-based correctional facility and program (DCBCF) instead of a court or courts of common pleas.
- Eliminates judicial corrections boards and gives the functions previously held by them to facility governing boards, advised by judicial advisory boards.
- Establishes the composition of facility governing boards and the appointing authorities for those boards.
- Subjects the members of judicial advisory boards and facility governing boards, the director and employees of a CBCF or DCBCF appointed by its facility governing board, the director or an individual in a substantially equivalent position under a contract between a nonprofit or private entity and a facility governing board to operate a CBCF or DCBCF, and each officer or board member of such a nonprofit or private entity to the provisions of the Ohio Ethics Law and conflict of interest statutes.

** The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Requires the members of each facility governing board to attend orientation training developed by the associated judicial advisory board and annual ethics training developed by the associated judicial advisory board in consultation with the Ohio Ethics Commission or provided by the Commission.
- Applies the Political Subdivision Sovereign Immunity Law to the county or counties served by CBCFs or DCBCFs, to the facilities and programs themselves, and to the facility governing boards of those facilities and programs.
- Abolishes citizens advisory boards relative to CBCFs and DCBCFs.
- Modifies the requirements that must be included in a proposal for the creation of a CBCF or DCBCF.
- In addition to the powers given to judicial corrections boards under former law, gives the successor facility governing boards the powers to contract for legal and fiscal services and to purchase liability insurance for the members of the facility governing board, the judicial advisory board, and the employees of the CBCF or DCBCF when engaged in the performance of official duties.
- Replaces a CBCF's or DCBCF's commissary fund with a resident program fund that may be used for expanded purposes.
- Specifies that persons who are not indigent and who are confined in a CBCF or DCBCF are financially responsible for the payment of any medical treatment or services provided, and that no person so confined may be denied necessary medical care because of inability to pay.
- Requires purchases made with state financial assistance awarded to CBCFs or DCBCFs to be in compliance with current state competitive bidding laws as well as Division of Parole and Community Services' fiscal guidelines.
- Specifies that it is the intent of the General Assembly to ensure membership in PERS for officers and employees of publicly operated CBCFs and DCBCFs and not to add to the category of employees eligible for membership in PERS.

- Maintains the nonexempt collective bargaining status of employees of CBCFs or DCBCFs who are covered by a collective bargaining agreement on June 1, 2005.
- Makes other revisions to the law governing CBCFs and DCBCFs.

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CONTENT AND OPERATION

Community-based correctional facilities: in general

Under law unchanged by the act, a court may sentence certain felons to up to six months at a community-based correctional facility (CBCF) or district community-based correctional facility (DCBCF) that serves the county, in addition to other available sanctions. Additionally, the Parole Board as a condition of release from imprisonment and as a post-release control sanction may require an offender to be confined in a CBCF or DCBCF. (R.C. 2929.16 and 2967.28--not in the act.)

Establishment of a CBCF or DCBCF

Former law

Under former law, the court of common pleas of any county that had a population of at least 200,000 could formulate a community-based correctional proposal that, upon implementation, would provide a CBCF for the use of that court. For counties that had fewer than 200,000 residents, the courts of common pleas of two or more adjoining or neighboring counties that had an aggregate population of at least 200,000 could form a judicial corrections board, proceed to organize a district, and formulate a district community-based correctional proposal that, upon implementation, would provide a DCBCF for the use of the member courts.

Also, under former law, the fact of any proposal formulation and the fact of any subsequent establishment of a CBCF or DCBCF had to be entered upon the journal of the court or courts. (R.C. 2301.51(A)(1) and (2).)

Changes made by the act

Under the act, any *county* (instead of a court of common pleas) that has a population of at least 200,000 is eligible to formulate a community-based correctional proposal. For counties that have fewer than 200,000 residents, two or more adjoining or neighboring counties that have an aggregate population of at least 200,000 are eligible to formulate a district community-based correctional proposal. The act also removes the requirement that the fact of any proposal formulation and the fact of any subsequent establishment of a CBCF or DCBCF be entered upon the journal of the court or each member court.

Under continuing law, the Department of Rehabilitation and Correction (DRC) has the authority to approve the formulation of more than one CBCF or DCBCF proposal. In determining whether to grant approval for more than one

CBCF or DCBCF proposal, DRC must consider the extent to which the county or counties commit felony offenders to the state correctional system. (R.C. 2301.51(A)(1) and (2).)

Submitting a CBCF or DCBCF proposal

Former law

Under former law, a judicial corrections board was responsible for submitting a proposal for the formation of a CBCF or DCBCF to DRC's Division of Parole and Community Services. A judicial corrections board was comprised of judges, not to exceed 11 in number, who were members of the courts of common pleas to be served by the CBCF or DCBCF. (R.C. 2301.51(A)(1) and (2) and (B)(1); R.C. 5120.10--not in the act.)

Each proposal for a CBCF or DCBCF had to provide for or contain at least all of the following provisions (R.C. 2301.52):

(1) The designation of a physical facility to be used for the confinement of persons sentenced to the CBCF or DCBCF that (a) was a secure facility that contained lockups and other measures sufficient to ensure the safety of the surrounding community, (b) provided living space and accommodations that were suitable and adequate for the housing of offenders, and (c) was constructed or modified, and maintained and operated, so that it complied with applicable rules.¹

(2) The designation of a general treatment program that would be applied individually to each person sentenced to the CBCF or DCBCF and that, at a minimum, would include provisions to ensure that (a) each person confined in the CBCF or DCBCF was provided an orientation period of at least 30 days, during which the person was not permitted to leave the facility and would be evaluated in relation to the person's placement in rehabilitative programs, (b) each person confined in the CBCF or DCBCF would be placed in a release program whereby the person would be released temporarily for the purpose of employment in a manner consistent with the applicable work-release program established under law, for vocational training, or for other educational or rehabilitative programs, and (c) all available and suitable community resources would be utilized in the treatment of each person confined in the CBCF or DCBCF.

¹ For a facility that became operational prior to July 1, 1993, the facility had to have adequate living space for between 20 and 200 persons. For a facility that became operational on or after July 1, 1993, the facility had to have adequate living space for between 50 and 200 persons. (R.C. 2301.52(A)(2)(a) and (b).)

(3) Provisions to ensure that the CBCF or DCBCF would be staffed and operated by persons who satisfied the minimum educational and experience requirements prescribed by DRC rule;

(4) Provisions for an intake officer to screen each felony offender who was sentenced by the court or courts that the CBCF or DCBCF served and to make recommendations to the sentencing court concerning the admission or referral of each felony offender to the facility and program within 14 days after notification of sentencing;

(5) Written screening standards that would be used by the intake officer in screening an offender and that, at a minimum, would include provisions to ensure that the intake officer would not make a recommendation to a sentencing court in support of the sentencing of a person to the CBCF or DCBCF if the person was ineligible for placement in the CBCF or DCBCF under rules adopted by its judicial corrections board;

(6) A statement that a good faith effort would be made to ensure that the persons who staff and operate the CBCF or DCBCF proportionately represent the racial, ethnic, and cultural diversity of the persons released, sentenced, or otherwise committed or admitted to the CBCF or DCBCF.

Changes made by the act

Judicial corrections board. The act eliminates judicial corrections boards (R.C. 2301.51(A)(1) and (2), (B), (C), and (D)).

Judicial advisory board. Instead of judicial corrections boards, the act creates both judicial advisory boards and facility governing boards. Under the act, the formulation of a proposal for a CBCF or DCBCF begins by the establishment of a judicial advisory board by judgment entry. The judicial advisory board must consist of not less than three judges. Each general division judge of the court of common pleas in the county or counties wishing to formulate a proposal or to continue operation of an existing facility is eligible to become a member of the judicial advisory board but is not required to be a member. A judicial advisory board also may invite a non-general division judge from the county or counties proposing the creation of a CBCF or DCBCF or a general division judge from a court of common pleas outside the county or counties proposing the creation who regularly sends offenders to its facility to be a member of the judicial advisory board. (R.C. 2301.51(A)(3)(a).)

A judge who serves on a judicial advisory board receives no additional compensation but may be reimbursed for reasonable and necessary expenses

incurred during service on the board. The act also specifies that service on the board is a judicial function. (R.C. 2301.51(A)(3)(b).)

The judicial advisory board must meet at least once a year, but may meet as often as the members consider necessary, to provide advice to the associated facility governing board regarding the public safety needs of the community, admission criteria for any CBCF or DCBCF, and the general requirements of the CBCF or DCBCF program. The judicial advisory board provides advice to the associated facility governing board on whether a proposed or existing CBCF or DCBCF will be operated, managed, and controlled by a director appointed by the facility governing board or by a nonprofit or private entity pursuant to contract. The judicial advisory board also may communicate directly with the Division of Parole and Community Services and provide advice to the facility governing board regarding the state financial assistance agreement discussed below. (R.C. 2301.51(A)(3)(c) and 2301.55(A)(1).)

Facility governing board. The act provides that a facility governing board, instead of a judicial corrections board, formulates the proposal for a CBCF or DCBCF, submits the proposal to the Division of Parole and Community Services, and then governs the facility. The facility governing board of a CBCF or DCBCF must consist of at least six members, with each member serving a three-year term (after initial staggered terms of one year, two years, or three years). The judicial advisory board is responsible for appointing two-thirds of the members, and the board or boards of county commissioners of the member counties must appoint the remaining one-third of the members. In the case of a DCBCF, no more than one-half of the members may be from the same county. The act requires that all appointments to the *initial* facility governing board of a CBCF or DCBCF created under former law and continuing under the act's provisions be made within 30 days after its effective date. (R.C. 2301.51(A)(3)(c), (4), and (8), (B), and (E).)

Members of a facility governing board receive no compensation but may be reimbursed reasonable and necessary expenses for their service (R.C. 2301.51(F)).

Provisions applicable to one or both types of the new boards. The act provides that the Political Subdivision Sovereign Immunity Law (R.C. Chapter 2744.) applies to the county or counties served by a CBCF or DCBCF, to the facility and program itself, and to the facility governing board of the CBCF or DCBCF (R.C. 2301.51(A)(5) and 2744.01(F)). It also provides that the members of the judicial advisory board and the facility governing board of a CBCF or DCBCF are to be considered public officials or employees for purposes of the Ohio Ethics Law and to be considered public officials or public servants for purposes of provisions of law dealing with conflicts of interest (R.C.

2301.51(A)(6)).² Similar consideration is given under the act to the director and employees of a CBCF or DCBCF appointed by its facility governing board, to any individual serving as director or in a substantially equivalent capacity to director under a contract between a nonprofit or private entity and a facility governing board entered into under the act (but only in connection with the performance of director duties under the contract), to each trustee or member of the facility governing board, and to each officer or board member of such a nonprofit or private entity (but only in connection with the performance of officer or board member duties under the contract);³ an exception with respect to this consideration is that the act incorporates, in addition to the Ohio Ethics Law, the entire Offenses Against Justice and Public Administration Law, instead of just its conflict of interest provisions mentioned above. The act also specifies that the latter individuals are within the Ohio Ethics Commission's authority.⁴ (R.C. 2301.55(A)(2).)

Each member of a facility governing board is required by the act to attend orientation training developed by the associated judicial advisory board and annual ethics training developed by the associated judicial advisory board in consultation with the Ohio Ethics Commission or provided by the Commission (R.C. 2301.51(A)(7)).

Requirements for a CBCF or DCBCF proposal. Under the act, the components that must be included in a CBCF or DCBCF proposal become the following (R.C. 2301.52):

(1) The designation of a physical facility to be used for the confinement of persons sentenced to the CBCF or DCBCF that (a) is a secure facility that contains lockups and other measures sufficient to ensure the safety of the surrounding community, (b) provides living space and accommodations that are suitable and adequate for the housing of offenders, and (c) is constructed or modified, and

² *These are the offenses of "having an unlawful interest in a public contract" (R.C. 2921.42) and "soliciting improper compensation" (R.C. 2921.43).*

³ *Each officer or board member of such a nonprofit or private entity who serves solely as an officer or board member and who does not serve the CBCF or DCBCF as director or in a substantially equivalent capacity is not required, however, to file a financial disclosure statement under the Ohio Ethics Law (R.C. 2301.55(A)(2)(j)).*

⁴ *The act contains several provisions declaring certain conduct, status, or interests of certain individuals to not be prohibited by the Ohio Ethics Law or the Offenses Against Justice and Public Administration Law. Those individuals have specified relations to nonprofit or private entities that have contracted with a facility governing board to operate a CBCF or DCBCF. (R.C. 2301.55(A)(3) and (4).)*

maintained and operated, so that it complies with applicable rules (the act removes the former requirement that the CBCF or DCBCF *house specified numbers of persons*);

(2) The designation of a program that will be applied individually to each person sentenced to a CBCF or DCBCF and that includes, but is not limited to, education, treatment, or work release (the act removes former law's reference to a *general treatment* program);

(3) A provision that each person sentenced to or otherwise admitted with the consent of the facility governing board to a CBCF or DCBCF is provided an orientation period of at least 30 days, during which the person is not permitted to leave the facility and is evaluated in relation to the person's placement in rehabilitative programs (the act establishes this provision separate from the individual program mentioned above and also repeals former law's requirements tied to the "general treatment" program regarding a *release program* and the *use of community resources*);

(4) Provisions to ensure that the CBCF or DCBCF will be staffed to ensure security and the effective delivery of services (the act removes the mention of certain *educational and experience* requirements for CBCF or DCBCF employees);

(5) Provisions for the facility governing board, upon the advice of the judicial advisory board, to set standards for the screening and admission of each felony offender who is referred by a court or the Parole Board (*new provision*);

(6) A statement that a good faith effort will be made to ensure that the persons who staff and operate the CBCF or DCBCF proportionately represent the racial, ethnic, and cultural diversity of the persons released, sentenced, or otherwise committed or admitted to the CBCF or DCBCF (continuing law).

The act also removes former law's requirements regarding intake officers and screening standards (see items (4) and (5) under "**Former law**," above) (R.C. 2301.52).

Operation of a CBCF or DCBCF

Former law

Duties of the judicial corrections board. Under former law, once the Division of Parole and Community Services approved the formation of a CBCF or DCBCF, the judicial corrections board that submitted the proposal could establish and operate the approved CBCF or DCBCF, and persons could be placed in it. Generally, CBCFs and DCBCFs had to operate in conformance with DRC rules.

Also, the judicial corrections board had to adopt rules for the sentencing or other commitment or admission pursuant to law of persons to, and the operation of, the CBCF or DCBCF. These rules had to be entered upon the journal of the court of each member court of a district. (R.C. 2301.51(B) and (C), 2301.55(A)(3), and 5120.111.)

A judicial corrections board was responsible for appointing and fixing the compensation of the director of the CBCF or DCBCF and other professional, technical, and clerical employees who were necessary to properly maintain and operate the CBCF or DCBCF. The director, under the supervision of the board and subject to its rules, had the responsibility to control, manage, operate, and have general charge of the CBCF or DCBCF, including custody of its property, files, and records. (R.C. 2301.55(A)(1).)

Additional authority given to a judicial corrections board included the ability to enter into contracts with the board of county commissioners of the county in which the CBCF was located or, in the case of a DCBCF, with the county commissioners of any county included in the district, whereby the county was to provide buildings, goods, and services to the CBCF or DCBCF. The board also could accept any gift, donation, devise, or bequest of real or personal property made to it by any person, or any grant or appropriation made to it by any federal, state, or local governmental unit or agency. The board then could use the gift, donation, devise, bequest, grant, or appropriation in any manner that was consistent with any conditions on it and that was considered to be in the interests of the CBCF or DCBCF, including transferring any real or personal property in a manner consistent with Ohio law. (R.C. 2301.55(A)(2) and (B).)

Citizens advisory boards. Once the Division of Parole and Community Services approved a proposal for the establishment of a CBCF or DCBCF, former law required the judicial corrections board that submitted the proposal, in conjunction with the county or counties served by the CBCF or DCBCF, to appoint a citizens advisory board comprised of an uneven number of at least five but not more than 15 members. If a judicial corrections board submitted more than one proposal for the establishment of a CBCF or DCBCF, and if more than one proposal was approved by the Division of Parole and Community Services, the judicial corrections board was required to appoint only one citizens advisory board. (R.C. 2301.53--repealed by the act.)

A citizens advisory board had to do all of the following (R.C. 2301.54--repealed by the act):

(1) Recommend physical facilities for the use and operation of the CBCF or DCBCF;

(2) Provide community relations services for the CBCF or DCBCF;

(3) Regularly conduct public meetings in the communities served by the CBCF or DCBCF, accept recommendations from the public offered at the meetings and relating to the operation of the CBCF or DCBCF, and refer the recommendations to the judicial corrections board;

(4) Encourage the provision of community services by persons, agencies, organizations, or groups in the area served by the CBCF or DCBCF, and seek out persons, agencies, organizations, or groups to provide community services to the CBCF or DCBCF;

(5) Perform other duties relating to the operation of the CBCF or DCBCF prescribed by the judicial corrections board.

The applicable judicial corrections board was responsible for providing the citizens advisory board with necessary staff assistance (R.C. 2301.55(C)).

Changes made by the act

Duties of the facility governing board. The act eliminates judicial corrections boards and gives the responsibility for operating and administering CBCFs and DCBCFs to facility governing boards. Under the act, the facility governing board must, upon the advice of the judicial advisory board, either (1) appoint a director who will control, manage, operate, and have general charge of the facility and program or (2) enter into a contract with a nonprofit or private entity that will control, manage, operate, and have general charge of the facility and program. The director or entity will have custody of the CBCF's or DCBCF's property, files, and records. When a facility governing board, upon the advice of the judicial advisory board, enters into a contract for the management, operation, and control of a facility and program, an agreement that includes, at a minimum, terms and conditions established by DRC must be in effect with the chosen contractor. (R.C. 2301.55(A)(1).)

As was permitted for judicial corrections boards under former law, the act allows a facility governing board to contract with the applicable board or boards of county commissioners for the provision of buildings, goods, and services to the CBCF or DCBCF. Also, similar to former law, the facility governing board, upon the advice of the judicial advisory board, must adopt rules for the commitment or admission of persons to, and the operation of, the CBCF or DCBCF that conform with Ohio law. (R.C. 2301.55(B) and (C).)

New powers given to the facility governing board under the act include all of the following (R.C. 2301.55(E), (F), and (G)):

(1) The ability to purchase liability insurance to cover members of the facility governing board, the judicial advisory board, and the CBCF or DCBCF employees when engaged in the performance of official duties;

(2) The ability to contract for legal services for the facility governing board, the judicial advisory board, and the CBCF or DCBCF employees when engaged in the performance of their official duties. The act generally specifies that, in the absence of a contract for legal services, the prosecuting attorney of the county in which a CBCF is located or of any county in which a DCBCF is located must provide those legal services; but if the CBCF or DCBCF is operated pursuant to a contract with a nonprofit or private entity, a prosecuting attorney is not obligated to provide legal services to the entity or its employees. When the prosecuting attorney does provide legal services, the prosecuting attorney must be reasonably reimbursed for them.

(3) The ability to contract with a fiscal agent who is responsible for the deposit of funds and compliance with the audit requirements discussed below. In the absence of a contract for a fiscal agent, the county auditor of the county in which a CBCF is located or of any county in which a DCBCF is located generally is responsible for providing fiscal services to the facility governing board; but if the CBCF or DCBCF is operated pursuant to a contract with a nonprofit or private entity, a county auditor is not obligated to provide fiscal services to that entity. When the county auditor does provide fiscal services, the auditor must be reasonably reimbursed for them.⁵

Citizens advisory boards. The act eliminates citizens advisory boards (repealed R.C. 2301.53 and 2301.54 and R.C. 2301.55(C)).

Funding a CBCF or DCBCF

Former law

Funding from the board of county commissioners. To finance a CBCF or DCBCF, the judicial corrections board could submit a request for funding all or part of the CBCF or DCBCF operation to the board or boards of county commissioners served by the CBCF or DCBCF. The board or boards had the authority to appropriate funding for the CBCF or DCBCF. If the board or boards decide against the funding or if the board or boards provided insufficient funding,

⁵ *Although the prosecuting attorney and the county auditor are "not obligated" to provide services to a nonprofit or private entity operating a CBCF or DCBCF, it appears that, if they choose to provide services, they must be reasonably reimbursed for them. It is not clear whether the facility governing board or the nonprofit or private entity is responsible for that reimbursement.*

the judicial corrections board had no recourse against the board or boards. (R.C. 2301.51(C) and 2301.56(A).)

State financial assistance. The judicial corrections board also could apply to the Division of Parole and Community Services for state financial assistance for the cost of renovation, maintenance, and operation of a CBCF or DCBCF. Once the Division received an application for financial assistance, it had to determine whether the application was in proper form, whether the applicant satisfied the standards of operation and training and qualifications of personnel prescribed by DRC rules, and whether the CBCF or DCBCF was already established or, once established, would satisfy the standards. If the Division determined that the application was in proper order and that the applicant met or would meet the standards, the Division had to notify the applicant that it qualified for state financial assistance. (R.C. 5120.112(A).)

To determine how much assistance to grant to a particular CBCF or DCBCF, the Division used a formula that allocated state financial assistance. The formula provided for funding based upon a set fee to be paid to an applicant per person committed or referred in the year of application. In no case could the set fee be greater than the average yearly cost of incarceration per inmate in all state correctional institutions, as determined by DRC. (R.C. 5120.112(B).)

It was within the discretion of the Division to determine the times and manner of distribution of state financial assistance. However, before state financial assistance was distributed, the Director of DRC, the Deputy Director of the Division, and the chairperson of the judicial corrections board had to enter into an agreement that was valid for one year from its date and that specified all terms and conditions applicable to the grant of assistance, including all of the following (R.C. 5120.112(C)):

(1) The total amount of assistance to be granted for each CBCF or DCBCF and the times and manner of the payment of the assistance;

(2) How persons who would staff and operate the CBCF or DCBCF would be utilized during the period for which the assistance was granted, including descriptions of their positions and duties, their salaries and fringe benefits, and their job qualifications and classifications;

(3) A statement that none of the persons who would staff and operate the CBCF or DCBCF, including those receiving some or all of their salaries out of funds received as state financial assistance, are employees or are to be considered as being employees of DRC, and a statement that the employees who would staff and operate that CBCF or DCBCF are its employees;

(4) A list of the type of expenses, other than salaries of persons who would staff and operate the CBCF or DCBCF, for which the state financial assistance could be used, and a requirement that purchases made with funds received as state financial assistance be made through the use of competitive bidding;

(5) The accounting procedures to be used by the CBCF or DCBCF in relation to the state financial assistance;

(6) A requirement that the CBCF or DCBCF file with the Division, during the period that state financial assistance is received, quarterly reports that would be statistical in nature and contain information required under a research design agreed upon by all parties to the agreement, for purposes of evaluating the CBCF or DCBCF;

(7) A requirement that the CBCF or DCBCF comply with all of the DRC standards of operation and training and qualifications of personnel and with all information submitted on its application;

(8) A statement that the CBCF or DCBCF would attempt to accept and treat at least 15% of the eligible adult felony offenders sentenced in the county or counties served during the period state financial assistance is received;

(9) A statement that the CBCF or DCBCF would make a reasonable effort to augment the funding received from the state.

If a CBCF or DCBCF failed to comply with the terms of an agreement, the Division could deny it state financial assistance. CBCFs and DCBCFs also were subject to audits by the Auditor of State.⁶ (R.C. 2301.56(E) and 5120.112(D).)

Other fees. A board of county commissioners could require a person who was convicted of an offense and confined in a CBCF or DCBCF to reimburse the county for its expenses incurred by reason of the person's confinement. Costs that could be reimbursed included the costs of repairing property damage, a per diem fee for room and board, medical and dental treatment costs, and a one-time reception fee. Prisoners received an itemized bill, had the ability to make periodic payments, and could contest portions of the bill. Reimbursed funds were credited to the general fund of the treasury of the political subdivision that incurred the expense, to be used for general fund purposes. (R.C. 2301.56(B) and 2929.37.)

Also, the judicial corrections board could establish a policy that required any person who was not indigent and who was confined in its CBCF or DCBCF to

⁶ *The act does not substantively change the provisions of law pertaining to Auditor of State audits (R.C. 2301.55(A)(5)(b) and 2301.56(D)(1)).*

pay a reception fee or a fee for any medical treatment or service requested by and provided to that person (R.C. 2301.56(C) and 2929.38).

Changes made by the act

County funding and awards of state financial assistance. Generally, the act's provisions regarding the funding of a CBCF or DCBCF *are similar to* the law discussed above. But, the act makes a few changes to that generally continuing funding law. *First*, instead of the judicial corrections board applying for funding from either a board of county commissioners or the Division of Parole and Community Services, the act gives this authority to the *facility governing board*. It is also the facility governing board, instead of the judicial corrections board, that enters into an award agreement with DRC and the Division. (R.C. 5120.112(C) requires the facility governing board, upon the advice of the judicial advisory board, to enter into an award agreement with DRC, and R.C. 5120.112(D) requires the chairperson of the facility governing board to enter into an agreement concerning the state financial assistance with the Director of DRC and the deputy director of the Division.) (R.C. 2301.51(C), 2301.56(A) and (B), and 5120.112(D).)

Second, the act modifies how the Division must *allocate* state financial assistance. Under the act, when the Division determines the amount of state financial assistance to award to a qualified applicant, it is prohibited from calculating the cost of an offender incarcerated in a CBCF or DCBCF as being greater than the average yearly cost of incarceration per inmate in all state correctional institutions, as determined by DRC. (R.C. 5120.112(B).)

Third, the act requires the *award agreement* for state financial assistance to include the following (R.C. 5120.112(D)):

(1) The total amount of assistance to be awarded for each CBCF or DCBCF and the times and manner of the payment of the assistance (*no substantive change in the law*);

(2) A description of how persons who will staff and operate the facility and program will be utilized during the period of the assistance, including descriptions of their positions, duties, salaries, and fringe benefits (the act removes former law's inclusion of their *job qualifications and classifications*);

(3) A statement that none of the persons who will staff and operate the facility and program, including those who are receiving some or all of their salaries out of funds received as state financial assistance, are employees or are to be considered as being employees of DRC, and a statement that the employees

who will staff and operate that facility and program are its employees (*no change in the law*);

(4) A list of the type of expenses, other than salaries of persons who will staff and operate the facility and program, for which the state financial assistance can be used, and a requirement that purchases made with funds received as state financial assistance *follow established fiscal guidelines* as determined by the Division and any applicable provisions of Ohio law, including, but not limited to, specified competitive bidding statutes generally used by the state for services, supplies, and public works contracts (replaces former law's general "*use of competitive bidding*" requirement);

(5) The accounting procedures to be used by the facility and program in relation to the state financial assistance (*no change in the law*);

(6) A requirement that the facility and program file with the Division, during the period that it receives state financial assistance, reports that must be statistical in nature and contain information required under a research design agreed upon by all parties to the agreement, for purposes of evaluating the CBCF or DCBCF (removes former law's *quarterly* report requirement);

(7) A requirement that the facility and program comply with the standards of operation prescribed by DRC and with all information submitted on its application (removes former law's inclusion of *compliance with DRC's standards for personnel training and qualifications*);

(8) A statement that the facility and program will make a reasonable effort to augment the funding received from the state (*no change in the law*).

Relatedly, the act removes former law's requirement that an agreement contain a statement that the facility and program will attempt to accept and treat at least 15% of the eligible adult felony offenders sentenced in the county or counties it serves during the period that it receives state financial assistance. And, the act also requires the facility governing board to identify in the award agreement a fiscal agent responsible for the deposit of funds and compliance with the CBCF and DCBCF laws. (R.C. 5120.112(C) and (D)(8).)

Under continuing law, if a CBCF or DCBCF fails to comply with the terms of an agreement satisfying the act's requirements, the Division may deny state financial assistance (R.C. 5120.112(E)(2)).

Other fees. The act does not affect the ability of a board of county commissioners to require a person confined in a CBCF or DCBCF to reimburse the county for incurred expenses. It also generally does not substantively change

the law regarding the imposition of a reception fee or a fee for any medical treatment or service provided, except (1) to allow (reception fee) or require (medical treatment or service fee--see below) the *facility governing board*, instead of the judicial corrections board, to develop the associated policies and (2) to relocate these provisions. (R.C. 2301.56(C), 2301.57(D), 2301.571, 2929.37, and 2929.38.)

The act specifies that, unless indigent, a person confined in a CBCF or DCBCF is financially responsible for the payment of any medical expense or service requested by and provided to that person. And, it requires the facility governing board to establish a policy that requires such a confined person to pay for any medical treatment or service so requested and provided. The fee cannot exceed the actual cost of the treatment or service provided, and no person can be denied necessary medical care because of an inability to pay for it. (R.C. 2301.571.)

Other medical issues involving a person confined in a CBCF or DCBCF

Former law

Health insurance claims of a confined person. For each person confined in a CBCF or DCBCF, the county could determine if that person was covered by a health insurance policy or health care contract or plan and the terms of that policy, contract, or plan. If a person was so covered and the CBCF or DCBCF provided health care services to the person, the person, county, or health care services provider had to promptly submit a claim for payment for the health care services to the appropriate third-party payer and ensure that payment of any amount due on the claim was made to the county or provider. Any health care services payment so received by a county was required to be paid into the county treasury. (R.C. 2301.57.)

Authority to test for certain diseases. The person in charge of the operation of a CBCF or DCBCF had the authority to cause a person confined in it to be examined and tested for tuberculosis, HIV infection, hepatitis, and other contagious diseases. If the confined offender refused to be so tested or treated, the person in charge of the facility could cause the confined offender to be tested and treated involuntarily. (R.C. 2301.56(D).)

Changes made by the act

Health insurance claims of a confined person. The act gives the authority to determine a person's health insurance or health care contract or plan coverage to the CBCF or DCBCF, instead of the county as under former law. And, payment on claims for health care services provided to the person by the CBCF or DCBCF

instead is to be made to the CBCF or DCBCF, or the provider. The act relatedly removes the provision requiring any health care payment received by a county be paid into the county treasury. (R.C. 2301.57(A), (B), and (C).)

Authority to test for certain diseases. The act does not change a CBCF's or DCBCF's authority to test for certain diseases but relocates the provisions (R.C. 2301.56(D) and 2301.57(E)).

Commissary fund

Former law

Under former law, the director of a CBCF or DCBCF was authorized to establish a commissary for the facility. If one was established, all persons in the facility had to receive commissary privileges, and purchases from the commissary had to be deducted from each person's facility account. But, if a person was indigent, the commissary was required to provide necessary hygiene articles and writing materials to the person. (The act maintains the latter two provisions--see below.)

If a commissary was established, the director of the CBCF or DCBCF was required to create a commissary fund. Commissary fund revenue over and above operating costs and reserve was considered profit and generally had to be expended for the purchase of supplies and equipment for the benefit of persons incarcerated in the facility or to pay salaries and benefits for facility employees. (R.C. 2301.58--repealed by the act.)

Changes made by the act

The act repeals most of the commissary fund provisions discussed above and enacts a new R.C. 2301.58 that permits the establishment of a *resident program fund*. Under the act, if the facility governing board approves, the director of the CBCF or DCBCF may establish a resident program fund. The director must establish rules, to be approved by the facility governing board, for the operation of the fund that follow guidelines established by the Auditor of State. (R.C. 2301.58(A) and (C).)

The director is required to deposit in the fund all revenues received by the facility from commissions on telephone systems, commissary operations, reimbursable costs such as per diem and medical services, and similar services. The money in the fund can be used only to pay for the costs of the following expenses (R.C. 2301.58(A)):

(1) The purchase of materials, supplies, and equipment used in any library program, educational program, vocational program, rehabilitative program,

religious program, medical services program, or recreational program operated by the facility for the benefit of the residents;

(2) The construction, alteration, repair, or reconstruction of a facility under the control of the facility governing board for use in any program mentioned in item (1) above;

(3) The payment of salaries, wages, and other compensation to employees of the facility who are employed in any program mentioned in item (1) above;

(4) The compensation of vendors that contract with the facility for the provision of services for any program mentioned in item (1) above;

(5) The purchase of other goods and the payment of other services that are determined, in the discretion of the director, to be goods and services that may provide additional benefit to the residents;

(6) The costs for the auditing of the resident program fund.

The act also maintains in this new statute provisions that, if a *commissary* is established by a CBCF or DCBCF, all persons in the facility must receive commissary privileges, and if a person is indigent, the commissary must provide necessary hygiene articles and writing materials to the person (R.C. 2301.58(B)).

Withdrawal by a court from a CBCF or DCBCF

Former law

If a *court of common pleas* determined that it no longer wanted to be served by a CBCF, the court could dissolve the CBCF by entering upon its journal the fact of the determination to dissolve the CBCF and by notifying, in writing, the Division of Parole and Community Services of the determination. If the court was served by more than one CBCF, it could dissolve some or all of them, and, if it did not dissolve all of them, it had to continue the operation of the remaining CBCFs. (R.C. 2301.51(D)(1).)

If *all of the courts of common pleas* being served by any DCBCF determined that they no longer wanted to be served by it, the courts could dissolve it by entering upon the journal of each court the fact of the determination to dissolve the DCBCF and by the judge who served as chairperson of the judicial corrections board notifying, in writing, the Division of Parole and Community Services of the determination. If the courts were served by more than one DCBCF, they could dissolve some or all of them, and, if the courts did not dissolve all of them, the courts were required to continue the operation of the remaining DCBCFs. (R.C. 2301.51(D)(2).)

If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs determined that it no longer wanted to be served by the DCBCFs, the court could terminate its involvement with each of the DCBCFs by entering upon its journal the fact of the determination to terminate its involvement with the DCBCFs and by notifying, in writing, the Division of Parole and Community Services of the determination. If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs terminated its involvement with each of the DCBCFs, the other courts of common pleas being served by them were allowed to continue to be served by each of them if the other counties were adjoining or neighboring counties and had an aggregate population of 200,000 or more. (R.C. 2301.51(D)(3).)

Changes made by the act

The act *largely retains* the law regarding a court's withdrawal from a CBCF or DCBCF. Under the act, if a court of common pleas determines that it no longer wants to be served by a CBCF, the *facility governing board, upon the advice of the judicial advisory board* (instead of the court as under former law) may dissolve the CBCF by notifying, in writing, the Division of Parole and Community Services of the determination. If the court is served by more than one CBCF, the facility governing board, upon the advice of the judicial advisory board, may dissolve some or all of the CBCFs, and, if it does not dissolve all of the CBCFs, the facility governing board must continue the operation of the remaining CBCFs. (R.C. 2301.51(D)(1).)

If all of the courts of common pleas being served by any DCBCF determine that they no longer want to be served by it, *the facility governing board, upon the advice of the judicial advisory board*, may dissolve the DCBCF by notifying, in writing, the Division of Parole and Community Services of the determination. If the courts are served by more than one DCBCF, the facility governing board, upon the advice of the judicial advisory board, may dissolve some or all of the DCBCFs, and, if it does not dissolve all of them, the facility governing board must continue the operation of the remaining DCBCFs. (R.C. 2301.51(D)(2).)

If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs determines that it no longer wants to be served by the DCBCFs, *the court* may terminate its involvement with each of the DCBCFs by entering upon its journal the fact of the determination to terminate its involvement with the DCBCFs and by notifying, in writing, the Division of Parole and Community Services of the determination (continuing law). If at least one, but not all, of the courts of common pleas being served by one or more DCBCFs terminates its involvement with each of the DCBCFs, the other courts of common pleas being served by them may continue to be served by each of them; the act removes, in this regard, the 200,000 or more aggregate population and the

adjoining or neighboring county requirements of former law. Under the act too, a court may use a DCBCF by either remaining as a member county of the DCBCF or by making a written service agreement with the facility governing board without remaining a member county. (R.C. 2301.51(D)(3).)

Required DRC rules

Former law

Former law required DRC to perform the following functions with respect to CBCFs and DCBCFs (R.C. 5120.111):

(1) Adopt rules that would serve as criteria for the operation of approved CBCFs and DCBCFs;

(2) *Adopt rules that prescribed minimum educational and experience requirements that had to be satisfied by persons who staffed and operated a CBCF or DCBCF* (italicized matter in this portion of the final analysis indicates provisions to which the act makes changes discussed below);

(3) Adopt rules governing the procedures for the submission of proposals for the establishment of CBCFs and DCBCFs to the Division of Parole and Community Services;

(4) Prescribe forms that a *judicial corrections board* had to use to apply for state financial assistance *and that included a requirement that the applicant estimate the number of offenders that would be committed or referred to a CBCF or DCBCF and that the CBCF or DCBCF would serve in the year of application*;

(5) Adopt rules that prescribed the standards of operation *and the training and qualifications of persons who staffed and operated* the CBCFs and DCBCFs that had to be satisfied for the CBCFs and DCBCFs to be eligible for state financial assistance. *These standards were required to include at least the minimum requirements that each proposal had to satisfy.*

(6) Through the Division of Parole and Community Services, accept and review proposals for the establishment of a CBCF or DCBCF, approve proposals that satisfied the requisite requirements, and administer the program for state financial assistance.

Changes made by the act

The act makes several changes to the obligations of DRC with respect to CBCFs and DCBCFs. First, it removes DRC's rule-making authority mentioned above regarding the minimum educational and experience requirements for CBCF

or DCBCF employees and regarding the training and qualifications of those employees. Second, it changes the reference in item (4) above (regarding prescribing state financial assistance application forms) from the judicial corrections board to the facility governing board. Third, it removes the requirement that an applicant for approval of a CBCF or DCBCF estimate the number of offenders that will be committed or referred to the CBCF or DCBCF and that the CBCF or DCBCF will serve in the year of application. And, fourth, it removes the requirement that the prescribed standards of operation must include the minimum requirements that each proposal must satisfy. (R.C. 5120.111(B), (C), and (D) and 5120.112(A).)

Provisions affecting existing CBCFs and DCBCFs

New boards

The act provides that, if a CBCF or DCBCF was established by a judicial corrections board under a prior version of R.C. 2301.51, the CBCF or DCBCF will continue to exist under its existing contractual agreements, but, on and after the act's effective date, the facility must be governed by a facility governing board and advised by a judicial advisory board created as described in the act. Appointments to the facility governing board must be made in accordance with the act's previously discussed appointment procedures within 30 days after the act's effective date. (R.C. 2301.51(A)(8).)

PERS membership

The act's changes summarized in this analysis do not change the status of any CBCF or DCBCF officer or employee in the Public Employees Retirement System (PERS). The act specifies that it is the intent of the General Assembly in enacting it to ensure membership in PERS for officers and employees of publicly operated CBCFs and DCBCFs and not to add to the category of employees eligible for membership in PERS. (Section 3.)

Preservation of certain collective bargaining rights

The act excludes from the definition of "public employee" in the Collective Bargaining Law (R.C. Chapter 4117.) any persons employed by a CBCF or DCBCF who are not subject to a collective bargaining agreement on June 1, 2005. Accordingly, any such employees covered by a collective bargaining agreement on June 1, 2005, will continue their *nonexempt* status under the Collective Bargaining Law even after the termination of the existing agreement. All other employees of a CBCF or DCBCF who are not subject to an agreement on June 1, 2005, will be exempt from the Collective Bargaining Law. (R.C. 4117.01(C)(18); Section 4.)

Miscellaneous

The act also makes numerous harmonizing and conforming changes to various statutes to reflect the new CBCF and DCBCF law (R.C. 2152.20(A)(4)(b), 2301.51(G), 2301.55(C), 2301.56, 2301.57(A), 2929.01(E), 2929.34(D), 2929.37(A), 2929.38(A) and (B), 5120.031(B)(2)(b)(i), and 5149.34(B)). Many of these changes involve substitution of the new entity--facility governing board--for the replaced entity--judicial corrections board.

HISTORY

ACTION	DATE
Introduced	03-31-05
Reported, H. Criminal Justice	04-27-05
Passed House (97-0)	05-04-05
Reported, S. State & Local Gov't & Veterans Affairs	10-26-05
Passed Senate (31-0)	10-26-05
House refused to concur in Senate amendments (1-93)	03-15-06
Senate insisted on its amendments and requested a conference committee	03-29-06
House acceded to request for conference committee	05-10-06
House agreed to conference committee report (53-42)	05-23-06
Senate agreed to conference committee report (22-10)	05-23-06

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